

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Federal-State Joint Board on)	
Universal Service Seeks Comment)	
On Review of the Definition of)	
Universal Service)	

**COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION AND SUMMARY

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Federal State-Joint Board on Universal Service's (Joint Board) Public Notice seeking comment on its review of the definition of universal service.¹ OPASTCO is a national trade association representing over 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37). In addition, they are all eligible telecommunications carriers (ETCs) in their service areas.

¹ *Federal-State Joint Board on Universal Service, Federal-State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service*, Public Notice, CC Docket 96-45, FCC 01-J-1 (rel. Aug. 21, 2001). (Public Notice)

OPASTCO urges the Joint Board to recommend to the Federal Communications Commission (FCC, Commission) that equal access to interexchange service be added to the list of services that are eligible for universal service support. Equal access should be defined as providing consumers with the ability to access the toll service providers to which they are presubscribed by dialing 1+ number. Equal access easily meets the criteria enumerated in section 254(c)(1) of the Telecommunications Act of 1996 (1996 Act, Act) under which any service must be considered for inclusion in the universal service definition. Specifically, equal access to interexchange service is essential to public safety, it is being subscribed to by a majority of residential subscribers, it has already been deployed in public telecommunications networks, and it is consistent with the public interest, convenience, and necessity.

The Joint Board should also recommend that wireless service providers be classified as local exchange carriers (LECs) at the same time they are designated as ETCs. This is entirely consistent with the Act's definition of a LEC, which permits the Commission to include wireless services where it deems appropriate. When a wireless carrier becomes an ETC, it is providing a package of services that would take the place of the services previously provided by a wireline LEC. Therefore, the Joint Board's own principle of competitive neutrality -- which includes technological neutrality -- dictates that wireless carriers, in their capacity as ETCs, be classified the same as the companies with which they are directly competing. The Joint Board should also consider the fact that any carrier designated as an ETC may at some point be the only ETC serving the area, and should therefore at least be capable of providing the services required of all LECs, including equal access.

II. THE JOINT BOARD SHOULD RECOMMEND THAT EQUAL ACCESS TO INTEREXCHANGE SERVICE BE ADDED TO THE LIST OF CORE SERVICES ELIGIBLE FOR UNIVERSAL SERVICE SUPPORT

A. Definition

Equal access to interexchange service should be defined as providing consumers with the ability to access the toll service providers to which they are presubscribed by dialing 1+ number; that is, without having to dial an access code.

B. Equal access to interexchange service meets the 1996 Act's four criteria for inclusion as a supported service

Section 254(c) of the 1996 Act establishes four criteria which the Joint Board and Commission must consider with respect to any telecommunications service being considered for inclusion in the list of services that are supported by federal universal service support. Equal access to interexchange service amply meets the four definitional criteria, as discussed below.

Equal access to interexchange service is essential to education, public health, or public safety. The Joint Board and FCC have already acknowledged that access to interexchange service is essential to education, public health, and public safety.² This is particularly so, the Joint Board recognized, for customers who live in rural areas and require access to interexchange service to reach medical and emergency services, schools, and local government offices. Thus, by extension, equal access to interexchange service is also essential, at the very least, to public safety. Certainly, it is essential that rural subscribers not have to dial extra digits to access their presubscribed toll carriers in an emergency situation.

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8818, para. 76 (1997) (First Report and Order).

Equal access to interexchange service, through the operation of market choices by customers, has been subscribed to by a substantial majority of residential subscribers.

Section 251(b)(3) of the 1996 Act requires that all LECs provide dialing parity to competing providers of telephone exchange service and telephone toll service. The FCC's implementation of that provision required that LECs begin providing toll dialing parity no later than February 8, 1999.³ Thus, given that the overwhelming majority of telephone subscribers have chosen to connect to the public switched network through a LEC, these customers are subscribing to equal access service.

Equal access to interexchange service is being deployed in public telecommunications networks by telecommunications carriers. As stated above, all LECs have been required to deploy equal access to telephone toll service since February 8, 1999.

Equal access to interexchange service is consistent with the public interest, convenience, and necessity. Congress would not have required all LECs to provide equal access to interexchange service if it did not believe that it was consistent with the public interest, convenience, and necessity. Providing customers with equal access to their presubscribed toll carriers is pro-competitive, which is one of the underlying purposes of the 1996 Act. The Joint Board itself has previously acknowledged the importance of equal access to interexchange service in a competitive environment.⁴ It is impossible to rationalize how multiple ETCs within a local service area is consistent with the public interest, convenience, and necessity, yet equal access to interexchange service is not.

³ 47 C.F.R. §51.211(a).

⁴ *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 96J-3 (rel. Nov. 8, 1996), para. 66.

Having met all four criteria, the Joint Board should recommend that equal access to interexchange service be added to the universal service definition.

C. The Joint Board and Commission's principle of competitive neutrality demands that wireless carriers be classified as local exchange carriers upon designation as an ETC

In the First Report and Order in CC Docket No. 96-45, the FCC declined to include equal access to interexchange service in the list of supported services. As its rationale for this decision, the Commission cites section 332(c)(8) of the 1996 Act which prohibits any requirement that commercial mobile service providers offer "equal access to common carriers for the provision of toll services."⁵ However, the FCC also acknowledges that, despite this provision of the Act, it could still require wireless carriers to provide equal access if it classified them as local exchange carriers.⁶ Specifically, the 1996 Act defines the term local exchange carrier as:

...any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of commercial mobile service under section 332(c), *except to the extent that the Commission finds that such service should be included in the definition of such term.*⁷

By including that exception into the LEC definition, Congress clearly foresaw the day when wireless carriers would engage in direct competition with traditional wireline local carriers. Congress recognized that competitive neutrality and fundamental fairness would dictate that they be classified the same way and specifically provided the Commission with the means to do so.

At the Joint Board's recommendation, the Commission included competitive neutrality to the list of principles set forth in section 254(b), which the Joint Board and

⁵ First Report and Order, 12 FCC Rcd at 8819, para. 78.

⁶ First Report and Order, 12 FCC Rcd at 8820, para. 79.

FCC must use to base policies for the preservation and advancement of universal service.⁸ The definition of that principle states that “universal service support mechanisms and rules [should] neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”⁹ Yet, the favoritism the Joint Board sought to avoid by recommending that principle is exactly what is occurring when the Commission relieves a select group of ETCs from service obligations imposed on all other ETCs, based solely on their use of a particular technology.

The very purpose of being designated as an ETC is to enable a carrier to qualify for federal universal service support. Federal universal service support, in turn, is intended to -- among other things -- “maintain rates for basic residential service at affordable levels.”¹⁰ It is widely understood that “basic residential service” includes telephone exchange and exchange access service, which are the very services used in the Act’s definition of a “local exchange carrier.” Moreover, among the services currently supported by federal universal service are single-party service, voice grade access to the public switched network, local usage, and access to interexchange service – all services related to the provision of telephone exchange and exchange access service.

Thus, when a wireless carrier is designated as an ETC, it is no longer merely a mobile service provider, offering a service that is most often subscribed to by customers as a complement to their wireline local exchange service.¹¹ Instead, it is acting as a local

⁷ 47 U.S.C. §153(26) (emphasis added).

⁸ First Report and Order, 12 FCC Rcd at 8801, para. 46.

⁹ *Id.*, para. 47.

¹⁰ First Report and Order, 12 FCC Rcd at 8780, para. 2.

¹¹ In fact, many wireless-based ETC universal service offerings utilize fixed wireless local loop technology. In WT Docket No. 96-6, the FCC wisely decided not to adopt a rebuttable presumption that fixed services offered over frequency bands licensed to CMRS providers be treated for regulatory purposes as CMRS.

service provider, offering a package of services that are intended to substitute for the services of the incumbent LEC (ILEC) or any other LEC serving the area. The Joint Board and Commission's own principle of competitive neutrality therefore demands that upon being designated as an ETC, wireless carriers be classified as local exchange carriers, the same as their wireline counterparts.

The FCC's regulation of Basic Exchange Telephone Radio Service (BETRS) provides precedent for classifying a wireless-based local service differently than "ordinary" commercial mobile service. In its explanation for why BETRS is not subject to mobile service regulation under section 332 of the Communications Act, the Commission stated that "the radio loop merely *takes the place* of wire or cable, which in rural and geophysically rugged areas is often prohibitively expensive to install and maintain."¹² When a wireless carrier becomes an ETC, the situation is clearly comparable. The wireless carrier is seeking to take the place of the traditional wireline LEC.

The present system of universal service support portability only exacerbates the competitive neutrality issue with regard to equal access to interexchange service. Under the present portability rules, a competitive ETC's (CETC) support is based on the per-line support received by the ILEC,¹³ which – in the service areas served by rural telephone companies - is based on the rural ILEC's actual costs.¹⁴ Built into the ILEC's costs of providing access to interexchange service (a supported service) is their required provision

See, Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, Second Report and Order and Order on Reconsideration, WT Docket No. 96-6, FCC 00-246 (rel. July 20, 2000), para. 8. This is a prime example of where such carriers should be regulated as local exchange carriers.

¹² *Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd at 1425 (1994) (emphasis added).

¹³ 47 C.F.R. §54.307(a)(1).

of toll dialing parity. Thus, when a wireless ETC receives support based on the ILEC's costs, it is receiving support for a service that it does not provide. This means that part of the support the wireless ETC is receiving is pure windfall, because it has not incurred the cost of providing equal access to interexchange service as the ILEC has.¹⁵ This is yet another reason why the Joint Board should recommend the inclusion of equal access as a supported service and that wireless service providers be classified as LECs upon designation as an ETC.

D. The Joint Board must recognize that any carrier designated as an ETC may at some point in time be the only carrier serving the service area and should therefore be capable of providing at least the same services that are required of all LECs

Congress presumed that when a state (or the FCC) designated a carrier as an ETC, that service provider would be able to act as a carrier of last resort, prepared to provide all of the customers in that service area with high quality service. Because Congress assumed that all ETCs would be able to provide comparable service, it required state commissions to allow a carrier to relinquish its ETC designation in any area served by more than one ETC.¹⁶ Significantly, the Act does not differentiate between the ILEC and other CETCs with regard to their ability to relinquish their ETC designation. The Joint Board should therefore consider the possibility that any carrier that is granted ETC status – including wireless providers – could, at some time, be the only local service provider in

¹⁴ See generally, 47 C.F.R. Part 36, subpart F.

¹⁵ Providing CETCs with ILEC-based support in excess of their costs creates opportunities for regulatory arbitrage and the incentive to pursue inefficient competitive entry. It is also an unnecessary burden on the nation's ratepayers, who ultimately fund universal service support. For these reasons, OPASTCO has recommended basing a CETC's universal service support on their own costs of providing the supported services. See, comments of NRTA and OPASTCO, filed July 30, 2001, in *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 16 FCC Rcd 11244, 11325-11327, paras. 207-211 (2001).

that area if the other ETCs decided to relinquish their designations. Without adding equal access to the universal service definition and a requirement that wireless carriers be classified as LECs when they become ETCs, customers being offered service only by a wireless ETC would not even have the option of receiving equal access to interexchange service. This is not what Congress intended and is most definitely not in the public interest.

III. CONCLUSION

The 1996 Act requires all local exchange carriers to provide equal access to interexchange service. Clearly, Congress believed that equal access was an essential service for all customers to receive in a competitive environment from their local service provider. Equal access to interexchange service amply meets all four of the Act's definitional criteria the Joint Board and FCC must consider with regard to any service it may add to the list of supported services. Therefore, the Joint Board should recommend that equal access to interexchange service be added to the list of core services eligible for universal service support. The Joint Board should also recommend that when a wireless carrier becomes an ETC, it is classified as a local exchange carrier under the Act. This is logical and competitively neutral since a wireless ETC is seeking to provide customers with telephone exchange and exchange access service, no different than wireline ETCs. It should therefore be required to provide the same services as its wireline counterparts, including equal access.

¹⁶ "A State commission *shall* permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier." 47 U.S.C

Respectfully submitted,

**THE ORGANIZATION FOR THE
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§214(e)(4) (emphasis added).

CERTIFICATE OF SERVICE

I, Alicia C. Reid, hereby certify that on this, the 5th day of November, 2001, a copy of OPASTCO's comments was sent by United States mail, first class, postage prepaid, to those listed on the attached sheet.

/s/ Alicia C. Reid
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CC Docket No. 96-45

FCC 01-J-1

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